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IN THE
Supreme Court of the United States

OCTOBER TERM, 1938

No. 1.

(No. 357, OCTOBER TERM, 1937, ON REHEARING)

GENERAL TALKING PICTURES CORPORATION,

Petitioner,

vs.

WESTERN ELECTRIC COMPANY, INCORPORATED,
ELECTRICAL RESEARCH PRODUCTS, INC. AND AMERICAN
TELEPHONE AND TELEGRAPH COMPANY.

MEMORANDUM FOR RESPONDENTS ON REHEARING.

MERRELL E. CLARK,
HENRY R. ASHTON,

Counsel for Respondents.

F. T. WOODWARD,
H. A. PATTISON,
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PANY.

**MEMORANDUM FOR RESPONDENTS ON
REHEARING.**

The opinion of this Court in this case was rendered on May 2, 1938 and is reported at 304 U. S. 175. For convenience, the portion of that opinion that is pertinent to this rehearing is reproduced as an Appendix to this memorandum, in the format and with the paging of the official report.

This rehearing is confined by the order granting it, to two questions. In its opinion, this Court upheld the position, urged on behalf of respondents at the original hearing, that these questions are not involved in this case, and that, under well settled principles of patent law, petitioner is liable as an infringer for its use of amplifiers which admittedly embody the inventions of respondents' patents. Our presentation of that position will be found at pages 8 to 20 of the Brief for Respondents in this case, a "reprint" of Part I of which (including the pages cited) is filed herewith.

We adhere to that position, as there presented.

In the present memorandum we shall deal primarily with this Court's opinion and with petitioner's criticisms of it.

A.

This Court's Opinion in this Case.

The facts of this case are stated in this Court's opinion (304 U. S. 179, 180, *infra*), and also in our original brief (reprint, pp. 8-11).

The two questions to which this rehearing is confined by the order granting it are:

1. Can the owner of a patent, by means thereof, restrict the use made of a device manufactured under the patent, after the device has passed into the hands of a purchaser in the ordinary channels of trade, and full consideration paid therefor?
2. Can a patent owner, by means of the patent, merely by a "license notice" attached to a device made under the patent and sold in the ordinary channels of trade by the patentee or by his licensee to make and sell, place an enforceable restriction on the purchaser thereof as to the use to which the purchaser may put the device?

Petitioner has sought to bring this case within the purview of these two questions by stating that this suit is:¹

"an attempt, by means of *patents*,² to restrict the use of . . . [an] article . . . made and sold *there-under* . . ."

But, in its opinion, this Court found that the amplifiers in question had *not* been sold to petitioner *under* the patents, that is, had not been sold by the patent owner or with his authority, but had been acquired by petitioner through *infringing* sales. It was for that reason that it concluded that petitioner's questions were not involved in this case.

The Court said (p. 181):

"There is no warrant for treating the sales of amplifiers to petitioner as if made under the patents or the authority of their owner."

"The patent owner did not sell to petitioner the amplifiers in question or authorize the Transformer Company to sell them or any amplifiers for use in theaters or any other commercial use" (p. 180).

The Transformer Company was licensed to sell them (p. 181):

"*only* for radio amateur reception, radio experimental reception and radio broadcast reception. . . ."

"It had no right to sell the amplifiers for use in theaters as a part of talking picture equipment.

"Nevertheless, it knowingly did sell the amplifiers in controversy to petitioner for that use" (p. 180).

Therefore—

"The sales made by the Transformer Company to petitioner were outside the scope of its license and

¹ Brief for petitioner on original hearing, page 11; brief on rehearing, page 8.

² Emphasis ours throughout unless otherwise noted.

not under the patent . . . [a] fact [which] both parties knew . . . at the time of the transactions" (id.).

"By knowingly making the sales to petitioner outside the scope of its license, the Transformer Company infringed the patents embodied in the amplifiers (citing cases). Petitioner, having with knowledge of the facts bought at sales constituting infringement, did itself infringe the patents embodied in the amplifiers when it leased them for use as talking picture equipment in theaters" (pp. 181, 182).

In our view, this decision is sound in every particular and should not be disturbed.

Petitioner's brief on rehearing presents no facts or arguments which were not presented on the original hearing and fully considered by the Court at that time, and no tenable reason why this decision should not stand.

Petitioner's criticisms of this Court's opinion are without merit.

Beginning at page 38 of its brief, petitioner presents its specific statement of why it considers that "This Court's prior decision in the present case was erroneous". The preceding part of the brief is devoted largely to a presentation of petitioner's views as to the legal effect of a sale of a patented device *under* a patent. Obviously, that subject, which has to do with the merits of petitioner's two questions, would be pertinent here only if this Court should reach the conclusion that it had erred in finding that under the circumstances of this case, the sale of amplifiers by the Transformer Company to petitioner was *not under* the patents but an *infringement* of them.

The Court did not err in its opinion in this or any other respect, as we shall now see, in replying to petitioner's specific criticisms of that opinion.

This Court did not err in holding that the Transformer Company's sales to petitioner were not sales under the patents, but were *infringing* sales.

The facts, as set forth in the above excerpts from the Court's opinion, are not now disputed by petitioner. It is not denied by petitioner that the license held by the Transformer Company was known by both parties to the transaction to be a *limited* license—

“to manufacture . . . , and to sell *only* for radio amateur reception, radio experimental reception, and radio broadcast reception”

Nor is it denied that the sale of the amplifiers in question by the Transformer Company to petitioner was known by both parties to be a sale of amplifiers for use in talking picture reproduction, and not a sale of amplifiers for use in radio reception of any kind.³

Indeed, the record shows that these amplifiers, which comprise expensive sets of apparatus, costing petitioner between \$400 and \$500 per set,⁴ were designed particularly for use in “talking pictures”⁵ and were built “to fit the input circuit and the load” to which they were to be subjected by petitioner in that field (II, 732 fol. 2196). Petitioner's president, Schlesinger, went so far as

³ Petitioner's original brief, page 36.

⁴ The two units making up the complete set of apparatus are designated A-41 and 25-A (II, 651). The prices which petitioner paid for these are given at III, 1591-1593.

⁵ I, 407. The A-41 unit, a “Preliminary or Photo-Electric Cell Amplifier” (II, 651), is designed for mounting on the motion picture projector itself and contains special circuits adapted to pick up and amplify the very feeble currents produced by the variations of light falling upon the photo-electric cell. See Waterman's testimony, I, 71, 90, 174, 175, and photograph of photo-electric cell amplifier, II, 1204. While photo-electric cells are a necessary part of talking picture equipment, they are not used in radio reception.

to boast that he had told an executive of respondents that (I, 375):

"They [the Transformer Company] are making it [the amplifier] practically for me alone, as I understand it, *my particular model*, and other models of a similar kind they are making for a few others."

These amplifiers were not adapted, without change, for use for radio reception, which is the only use for which the Transformer Company was licensed to sell them (I, 194, 195).

It is clear therefore that the Court made no error in its opinion in regard to the facts, or in regard to the state of knowledge of the parties at the time of the transaction.

Petitioner's only comment on this subject of knowledge (p. 42) resolves itself into the proposition that the Court erred in disregarding the "evidence" that "both parties acted on advice of counsel, and in the honest belief that the Transformer Company had the right to make these sales and the petitioner to make the purchases". Evidence of this character is wholly immaterial. That petitioner may not have been accurately informed as to the legal consequences of its acts, does not relieve it from those consequences.⁶ The very fact that both parties consulted counsel on the matter before consummating the transaction, leaves no room for doubt that both of them were cognizant of every pertinent fact at the time of its consummation. Indeed, it shows that their infringing acts were deliberate.

Petitioner's primary criticism of the Court's holding that the transaction in question was an infringing sale and *not* a sale *under* the patents, seems to be based on the proposition that the Court should have disregarded entirely the limitation of the Transformer Company's license,

"to sell *only* for radio amateur reception, radio experimental reception, and radio broadcast reception."

⁶ *Individual, etc. Co. v. Errett*, 297 Fed. 733, 741 (C. C. A. 2).

Thus, petitioner says, for example, that a complete answer to the position taken by respondents (and by this Court in its opinion) is "the fact that the licensee undeniably had the right to sell" (p. 32); and again (p. 41) that "no action of the American Transformer Company, which was licensed to sell," would determine whether or not infringement occurred". Petitioner asserts further (p. 34):

"Nor is it of any legal consequence what the manufacturing licensee in this case believed or knew of the uses to which petitioner might put the amplifiers it purchased."

These contentions are fundamentally unsound.

Preliminarily, we remind the Court that knowledge or intent on the part of a seller has frequently been held a determining factor on the issue of infringement even in the absence of an agreement making it so.

Thus in *Leeds & Catlin v. Victor Talking Machine Co.*, 213 U. S. 325, 337, the defendants were held liable because they sold—

"records for use in the Victor machine, 'an entirely voluntary and intentional' (to use the language of Judge Lacombe) contributory infringement."

Similarly, in *Morgan Envelope Co. v. Albany Paper Co.*, 152 U. S. 425, 433, this Court referred, with citations, to—

"many cases to the effect that the manufacture and sale of a single element of a combination, with intent that it shall be united to the other elements, and so complete the combination, is an infringement."

In *Sandusky Foundry & Machine Co. v. De Lavaud*, 274 Fed. 607, 610 (C. C. A. 6), the Court said:

"* * * Where defendants manufacture a device capable of an infringing use and sell it with the intent that it shall be so used, they infringe the

patent, even though their device is capable of a non-infringing use, and even though they go through the form of instructing that it shall be used in a non-infringing way."

To the same effect see *Westinghouse v. Precise Manufacturing Corp.*, 11 F. (2d) 209, 212 (C. C. A. 2).

In the instant case, the express limitation concerning the use for which the Transformer Company was licensed to sell amplifiers, was of the essence of the license agreement. It was a definition of the license grant itself. And it specifically made it of controlling "legal consequence" (to use petitioner's term) whether the Transformer Company knowingly sold amplifiers embodying the patented inventions, for use in fields other than those specified. It made the difference of whether the sales were within or without the scope of the license—non-infringing or infringing.

As this Court pointed out in its opinion (p. 181), a license is a mere waiver of the right to sue. Accordingly, the license which was granted to the Transformer Company and accepted by it might be stated by the licensor colloquially as follows:

I will waive my right to sue you for infringement, for making and selling amplifiers for radio reception (amateur, experimental, or broadcast). But this waiver does not extend to any sales which you may make for use in other fields. It will not detract in any way from the infringing character of such sales.

Since the sales here in controversy were made by the Transformer Company knowingly for use in another field, even to the extent that the amplifiers which were sold had been particularly designed for use in that other field and to meet petitioner's particular requirements in it (*supra*, p. 5), they were not affected in any way by the license. They were outside of its boundaries. So far as those sales were concerned, the effect was exactly the same as if there

had been no license at all, including the fact that respondents did not benefit from the sales by way of royalties.⁸

It was not necessary, as petitioner suggests, to wait until the amplifiers had actually been put to their intended use by petitioner, before the infringing character of these sales to petitioner could be determined. That was determined the moment the amplifiers were knowingly sold by the Transformer Company to petitioner for that use. Petitioner, who likewise knew all of the facts and connived in that infringement, is surely in no position to deny this.

This Court was clearly right in giving full force and effect to the limitations of petitioner's license, and in holding, as the Court did:

"The sales made by the Transformer Company to petitioner were outside the scope of its license and not under the patent. Both parties knew that fact at the time of the transactions. There is no ground for the assumption that petitioner was 'a purchaser in the ordinary channels of trade'" (180, 181).⁹

Royalties initially paid upon these sales by the Transformer Company were returned to that company by respondents' agent after the identity of the purchaser had been ascertained, and were accepted by the Transformer Company (III, 1645).

⁸ In contending that this holding of the Court was erroneous, petitioner says (pp. 45, 46)

"To point out the error it is merely necessary to refer to this Court's prior decision in *Dr. Miles Medical Co. v. Park & Sons*, 220 U. S. 373, 408, as authority for the proposition that *any article sold* becomes

'an article of commerce and the rules concerning the freedom of trade must be held to apply to it.'"

In the *Dr. Miles* case the Court was condemning a combination between dealers for "the destruction of competition and the fixing of prices" of certain unpatented medicines. The words quoted by petitioner are italicized

"By knowingly making the sales to petitioner outside the scope of its license, the Transformer Company infringed the patents embodied in the amplifiers" (181, 182).

And this Court was right also in concluding that since petitioner had purchased its amplifiers at these infringing sales, with full knowledge of the facts, its subsequent use of them was an infringement (182).

The Court did not fail to recognize the true relationship between respondents and the Transformer Company, on the one hand, and between the Transformer Company and petitioner, on the other.

At pages 46, 47 of its brief, petitioner asserts that this Court failed to recognize the true relationships between these several companies, in the transaction with which we are concerned. It says also, apparently having reference to such decisions as *Bement v. National Harrow Co.*, 186 U. S. 70, 91, and *United States v. General Electric Co., et al.*, 272 U. S. 476, 490 (reprint, p. 25), that where the relationship of *patentee to licensee* exists (47)—

"broad reservations of rights to patentees have been permitted, and are not here questioned."

This Court recognized very clearly the true relationships between the several parties. Respondents' general rela-

in the following excerpt from the Court's opinion, which will give the context sufficiently (p. 408):

"... No distinction can properly be made by reason of the particular character of the commodity in question [i. e., because it is a medicine]. It is not entitled to special privilege or immunity. It is *an article of commerce and the rules concerning the freedom of trade must be held to apply to it.*"

It is evident that this has no bearing upon the situation with which this Court is here dealing.

relationship to the Transformer Company was accurately identified as that of *patentee* to *licensee*, which petitioner admits may involve "broad reservations of rights". And respondents' reservation of rights, represented by the limitation in the Transformer Company's license to sell, was held to be effective. *Because* that reservation of rights *was* effective, the Transformer Company was properly characterized by the Court as an *infringing seller*, in its relations to both respondents and petitioner, when it disregarded that reservation, and sold the amplifiers to petitioner outside the scope of its license.

In that role, the Transformer Company could convey no rights under respondents' patents.

This Court's opinion is in strict accordance with the authorities. It does not in any way "upset" the law, as petitioner asserts in its petition for rehearing.

As we have seen, this Court's decision holding petitioner's use of its amplifiers an infringement, was based upon the finding that petitioner, with full knowledge of the facts, had acquired those amplifiers at sales which were not *under* the patents but *infringements* of them—sales which the vendor had no authority from the patent owner to make.

In this respect this case differs decisively from every case relied upon by petitioner.

This Court's decision does not "upset the law" as petitioner asserts.¹⁰ On the contrary, it is abundantly supported by the authorities cited in the Court's opinion (pp. 181, 182) which include those discussed in our brief on the original hearing (reprint, pp. 12, 13). The cases particularly relied upon by petitioner in this connection are

¹⁰ Petition for rehearing, page 1.

discussed and distinguished in that same brief (reprint, pp. 16-20).

The Court's opinion in this case is merely an application of fundamental and well established principles of patent law to undisputed facts.

The Court's decision in this case is in the public interest. An opposite decision would tend to defeat the fundamental purposes of the patent laws.

The issue of law which this Court passed upon in its decision in this case might just as well have come up for decision in a case where a small business man stood in the shoes of the present respondents as the patent owner, and was pitted against a corporation of substantial resources, as the infringer who competed with him in his field by using there the patented devices which it had acquired through infringing sales.

Whoever the patent owner may be, who finds himself in this situation, it is only by invoking *against his infringing competitor*, the injunctive and other remedies provided by the patent laws, that he can protect himself in the enjoyment of the exclusive rights which he has acquired under the patent grant for a limited period, for the manufacture, use and sale of the *new thing* that is covered by his patent.

As this Court pointed out in its opinion (181):

"Patent owners may grant licenses extending to all uses or limited to use in a defined field. *Rubber Company v. Goodyear*, 9 Wall. 788, 799-800. *Gamewell Fire-Alarm Telegraph Co. v. Brooklyn*, 14 Fed. 255. *Dorsey Bake Co. v. Bradley Co.*, Fed. Cas. No. 4,015, 7 Fed. Cas. 946, 947. Robinson on Patents, §§ 808, 824. Unquestionably, the owner of a patent may grant licenses to manufacture, use or sell upon conditions

not inconsistent with the scope of the monopoly. *Bement v. National Harrow Co.*, 186 U. S. 70, 93. *United States v. General Electric Co.*, 272 U. S. 476, 489.. There is here no attempt on the part of the patent owner to extend the scope of the monopoly beyond that contemplated by the patent statute. Cf. *Carbice Corp. v. American Patents Corp.*, 283 U. S. 27, 33. *Leitch Mfg. Co. v. Barber Co.*, 302 U. S. 458."

To deny a patent owner protection under the patent law against one who enters into infringing competition with him, in the way petitioner has done with respondents in this case, would seriously contract the patent monopoly, and be contrary to the public interest. It would reduce the incentive to invention, which it is the purpose of the patent laws to provide, and it would discourage the granting of *any* licenses by patent owners who desired to retain their exclusive rights in their own particular fields of endeavor.

Petitioner's assertion¹¹ that the decision involves "a grave injustice to the petitioner and the destruction of its business" can scarcely be intended seriously. The effect of the decision is merely to bring petitioner to book for the infringement which it committed when it leased to theaters for use in connection with talking picture equipment, patented amplifiers which it had purchased at sales known by it to be unauthorized by the patent owner and therefore in infringement of the patent. As we have said, petitioner having knowingly acquired the amplifiers at infringing sales, is in no better position than it would have been if it had acquired them from a manufacturer who had no license at all, or if it had made them itself. And there is no more "injustice" in holding petitioner liable for its infringement in the one case than there would be in the other.

Nor is there anything "drastically oppressive" in the decision of this Court in this case, as petitioner asserts (p. 44), or anything even savoring of "oppression". That

¹¹ Petition for rehearing, page 1.

assertion seems to be based upon the fantastic suggestion (*id.*) that this decision might lead the owner of a fountain pen patent to grant a license to some one to sell the patented pens only for use in signing letters, or the owner of an automobile patent to grant a license to some one to sell the patented automobiles only for transporting adults, etc. These supposititious limitations are obviously impractical, and impossible of enforcement. No one would ever contemplate either granting, or accepting, a license containing them. They do not in any sense define distinct fields of use.

In the instant case, on the other hand, the uses for which the Transformer Company's license permits the sale of patented amplifiers, do constitute a distinct field of use, recognized as such in the industry. The use for which that company sold the amplifiers to petitioner and to which the latter put those amplifiers, is in another distinct field, recognized as such.¹² The limitations of that license are entirely reasonable and readily enforceable, and are well calculated to effect their lawful and legitimate purpose which is to protect respondents in the enjoyment of their exclusive patent rights. They are just such "reservations of rights" as petitioner says "are not questioned here".

The gist of this Court's decision is merely to give effect to those reservations. It is not a sound criticism of this decision that some *other* reservations might present different problems.

This Court's decision of May 2, 1938 was right in holding that the two questions propounded by petitioner are not applicable to the facts of this case and that therefore they do not require answer here. And it was right also

¹² As we have seen, those amplifiers were especially designed and constructed for use in this latter field (*supra*, p. 5).

in holding that under the circumstances of this case, the fact that petitioner purchased its amplifiers from the Transformer Company, did not constitute a defense to respondents' charge of infringement.

We respectfully submit that there is no reason for disturbing this decision.

B.

The Merits of Petitioner's Questions.

We believe that there is no occasion for us to discuss or for the Court to consider the merits of petitioner's questions, inasmuch as they are not involved in the present case. That was the view we expressed on the original argument. At that time, however, by way of replying completely to petitioner's brief, we presented a statement of our position upon the issues raised by the questions themselves (reprint, pp. 21-64). We now reiterate that statement, by way of replying completely to petitioner's brief on rehearing.

Respectfully submitted,

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Appendix.

The Pertinent Portion of the Opinion of this Court, as it appears in 304 U. S. 175 in

GENERAL TALKING PICTURES CORP. v. WESTERN ELECTRIC CO. ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 357. Argued December 13, 14, 1937.—Decided May 2, 1938.

Mr. Justice Butler delivered the opinion of the Court.

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2. The respondent American Telephone & Telegraph Co. owns the patents. Amplifiers having these inventions are used in different fields. One, known as the commercial field, includes talking picture equipment for theaters. Another, called the private field, embraces radio broadcast reception, radio amateur reception, and radio experimental reception. The other respondents are subsidiaries of the Telephone Company and exclusive licensees in the commercial field of recording and reproducing sound; during the time of the infringement alleged, they were engaged in making and supplying to theaters talking picture equipment including amplifiers embodying the inventions covered by the patents in suit. The petitioner also furnished to theaters talking picture equipment including amplifiers which embody the invention covered by the patents in suit. Respondents' charge is that by so doing petitioner infringes them.

The American Transformer Company was one of a number of manufacturers holding non-exclusive licenses limited to the manufacture and sale of the amplifiers for private use, as distinguished from commercial use. These licenses were granted by the Radio Corporation, acting for itself and the respondent Telephone Company, and

were assented to by the latter. The Transformer Company's license was expressly confined to the right to manufacture and sell the patented amplifiers for radio amateur reception, radio experimental reception, and home broadcast reception. It had no right to sell the amplifiers for use in theaters as a part of talking picture equipment.

Nevertheless, it knowingly did sell the amplifiers in controversy to petitioner for that use. Petitioner admits that the Transformer Company knew that the amplifiers it sold to petitioner were to be used in the motion picture industry. The petitioner, when purchasing from the Transformer Company for that use, had actual knowledge that the latter had no license to make such a sale. In compliance with a requirement of the license, the Transformer Company affixed to amplifiers sold by it under the license a notice stating in substance that the apparatus was licensed only for radio amateur, experimental and broadcast reception under the patents in question. To the amplifiers sold to petitioner outside the scope of the license, it also affixed notices in the form described, but they were intended by both parties to be disregarded.

Petitioner puts its first question in affirmative form: "The owner of a patent cannot, by means of the patent, restrict the use made of a device manufactured under the patent after the device has passed into the hands of a purchaser in the ordinary channels of trade and full consideration paid therefor." But that proposition ignores controlling facts. The patent owner did not sell to petitioner the amplifiers in question or authorize the Transformer Company to sell them or any amplifiers for use in theaters or any other commercial use. The sales made by the Transformer Company to petitioner were outside the scope of its license and not under the patent. Both parties knew that fact at the time of the transactions.

There is no ground for the assumption that petitioner was "a purchaser in the ordinary channels of trade."

The Transformer Company was not an assignee; it did not own the patents or any interest in them; it was a mere licensee under a non-exclusive license, amounting to no more than "a mere waiver of the right to sue." *De Forest Co. v. United States*, 273 U. S. 236, 242. Pertinent words of the license are these: "To manufacture . . . and to sell only for radio amateur reception, radio experimental reception and radio broadcast reception. . . ." Patent owners may grant licenses extending to all uses or limited to use in a defined field. *Rubber Company v. Goodyear*, 9 Wall. 788, 799-800. *Gamewell Fire-Alarm Telegraph Co. v. Brooklyn*, 14 Fed. 255. *Dorsey Rake Co. v. Bradley Co.*, Fed. Cas. No. 4,015, 7 Fed. Cas. 946, 947. Robinson on Patents, §§ 808, 824. Unquestionably, the owner of a patent may grant licenses to manufacture, use or sell upon conditions not inconsistent with the scope of the monopoly. *Bement v. National Harrow Co.*, 186 U. S. 70, 93. *United States v. General Electric Co.*, 272 U. S. 476, 489. There is here no attempt on the part of the patent owner to extend the scope of the monopoly beyond that contemplated by the patent statute. Cf. *Carbice Corp. v. American Patents Corp.*, 283 U. S. 27, 33. *Leitch Mfg Co. v. Barber Co.*, 302 U. S. 458. There is no warrant for treating the sales of amplifiers to petitioner as if made under the patents or the authority of their owner. R. S. §§ 4884 and 4898 (35 U. S. C. §§ 40 and 47). *Moore v. Marsh*, 7 Wall. 515, 521. *Waterman v. Mackenzie*, 138 U. S. 252, 256. *Gayler v. Wilder*, 10 How. 477, 494. *United States v. General Electric Co.*, *supra*. Robinson on Patents, §§ 762, 763, 792, 806 *et seq.*

The Transformer Company could not convey to petitioner what both knew it was not authorized to sell. *Mitchell v. Hawley*, 16 Wall. 544, 550. By knowingly making the sales to petitioner outside the scope of its

license, the Transformer Company infringed the patents embodied in the amplifiers. *Rubber Co. v. Goodyear, supra.* *Bement v. National Harrow Co., supra.* *United States v. General Electric Co., supra.* *Vulcan Mfg. Co. v. Maytag Co.*, 73 F. (2d) 136, 139. *L. E. Waterman Co. v. Kline*, 234 Fed. 891, 893. *Porter Needle Co. v. Nat. Needle Co.*, 17 Fed. 536. Petitioner, having with knowledge of the facts bought at sales constituting infringement, did itself infringe the patents embodied in the amplifiers when it leased them for use as talking picture equipment in theaters. *Mitchell v. Hawley, ubi supra.* *American Cotton-Tie Supply Co. v. Bullard*, Fed. Cas. No. 294, 1 Fed. Cas. 625, 629, 630. See Robinson on Patents, § 824. See *Holiday v. Mattheson*, 24 Fed. 185, 186. *General Electric Co. v. Continental Lamp Works*, 280 Fed. 846, 851. As petitioner at the time it bought the amplifiers knew that the sales constituted infringement of the patents embodied in them, petitioner's second question, as to effect of the license notice, need not be considered.

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